Sec'y

Cecdt. 11-2 ..... 17-11-48.

Home (1949) Department.

D-11(E)

MS SERIES.

G.O. NO. 3305

Dated 13th August 1949

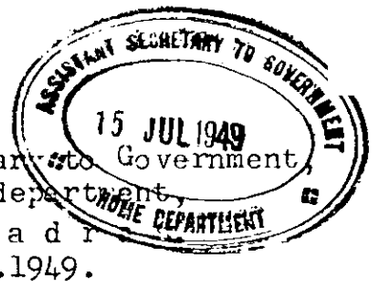
[Despatch Abstract.]

CRIMINAL JUSTICE - Appeal against acquittal - Bellary. S.C.No.5/48 - Applic Sanctioned.

D

65129

To 15.7.49



From
E.C.Allardice Esq. I.C.S.,
District Magistrate, Bellary.

The Secretary to Government,
Home department,
M a d r a s

Ref.c.1867/49 E.1. dated 10.7.1949.

Sir,

Sub:- Criminal appeal - appeal against acquittal in Sc.no. 5/48 on the file of sessions Judge Bellary - proposals submitted.

In S.c.No. 5/48 on the file of the Sessions Judge, Bellary, the accused, who was charged under section 30 I.P.C., was acquitted by the Sessions Judge, Bellary. There are two versions in the case, one spoken to by P.Ws 10 and 11 involving this accused and 4 others who were discharged in the lower court. The other version is spoken to by P.Ws 1 and 2 involving only this accused. The latter version was presented to the police earlier than the former.

2. The fact that the deceased was done to death by the accused is undisputed as both the versions involve him. The learned Sessions Judge has chosen to believe that this accused only committed the murder. He has accepted the evidence of P.Ws unreservedly, who have spoken to this fact.

3. But the learned Sessions Judge concluded that the accused committed the murder in self-defence. P.W.5, the medical officer found 14 incised wounds with several fractures of the bones on the body of the deceased. Such a brutal attack cannot be due to self defence. Even granting that the plea of the accused, that he committed the offence in the right of private defence, that cannot extend to the inflicting of more harm than it is necessary to inflict for the purpose of defence (section 99 I.P.C.) the number and nature of injuries are inconsistent with the theory of self-defence as defined in the section. The plea of the accused may fall under clause 2 of section 100, but the limitations placed in section 99 would clearly reject the same. It is therefore a clear case where the accused has exceeded his right of private defence.

4. The Public Prosecutor Bellary is of opinion that this is a fit case for appeal. I agree with him and submit that the Government may be pleased to move the High court in appeal.

5. Two copies of the judgment in S.C.No.5/48 are enclosed.

one copy placed below

Sd. E.C.Allardice,
District magistrate.

For Dist. Magistrate.

MP'B.13.7.

Urgent

Home dept.

Memo No. 65129 D/49-1 dt 18-7-49

Criminal Justice - Appeal against acquittal. Bellary S.C. No 5/48 - Application

Ref:- from the D M Bellary C.1867/49. E.1 dt 10.7.49

Referred to the P.P Madras for remarks which should be routed not later than 10.8.49

SE
17/7/49

Sd/-

Sd/- E Rw 19/7

To the P.P Madras (with a copy of plg. and papers kept below tape)

R.D. 11.8.49

Q in p 4 of (W)

Note:- The date of judgment - 6.4.49
3 months time expired on 5.7.49
6 months time will expire on 5.10.49

Sd/-

V.M.Ethiraj, Esq.,
Bar-at-Law.,
Public Prosecutor, Madras.

To

The Secretary to Government,
Home Department, Madras.

75635 D2
12.8.49

Opn.No.61/49, dated 11th August 1949.

Sir,

Sub: Appeal against acquittal - S.C.No.5/48, Sessions Judge, Bellary - Forwarding opinion.

With reference to Memorandum No.65129 D/49-1, Home, dated 18th July 1949, I have the honour to give below my opinion in the above matter.

2. The papers received for reference are returned herewith.

Opinion.

The Sessions Judge of Bellary acquitted the accused of the offence of murder. The accused admitted that he attacked the deceased and pleaded that he did so in self defence as the deceased had threatened him with a dagger. There does not appear to be any injury on the accused. The accused with a sickly inflicted as many as 14 incised injuries with several fractures of bones. The learned Sessions Judge has not discussed whether in defending himself it was necessary on the part of the accused to cause so many injuries. The limitation in Section 99 I.P.C. clearly shows that the accused has exceeded his right of defence. He ought to have been convicted for an offence

6/

under Section 304 I.P.C. at least. I am therefore of opinion that an appeal against acquittal is likely to be successful.

T. S. Sivakammathan
Public Prosecutor.

Home Deptt

CNo. 60129 D/49.

Cf proceedings in (T)

21/168

- pleader

- pps, bf

G.O.Ms.No. 3305. Dt 13-8-49.

Criminal Justice - Appeal against acquittal - Bellary S.C. No. 5/48 - Application - Sanctioned

Read:- From the D.M., Bellary Rep C No 867/49 E-1 dt 10-7-49

From the P.P., Madras opn. No. 61/49 dt 11.8.49

Order.

Under Sec 417 of the Code of Criminal Procedure, 1898, the Public Prosecutor, Madras is requested to present an appeal to the High court against the acquittal by the Sessions Judge, Bellary of the accused in S.C. No 5 of 1948 on his file.

2. The judgment in the case referred to above was delivered on 6.4.1949 but the District Magistrate addressed the Govt. to prefer an appeal against acquittal only on 10-7-1949. The D.M is referred to memo No 23065 f/44-1, Home, dt 1.8.44 according to which the proposal to file an appeal in this case should have reached the Govt. within 3 months from the date of judgment viz., 5.6.1949, and he is requested to state the circumstances which occasioned the delay.

By order

13/8/49

Dt 13/8/49

Cf pp 21-22 of 1949 (T)

Cf PP's opn in pps 5-6 of

Cf 'X' in p 4 of (W)

(I)

Cf 'X' in p 4 of (W)

Dt in 14 of dt 10.7.49 (I)/p3

Cf 'X' in p 3 of (W)

Drawn 13/8/49

To the P.P., Madras (with records kept below)

To the D.M. Bellary. (with copy of pps 5-6 of)

Note :- The draft order on petition is in accordance with the opinion of the P.P. Madras of his letter

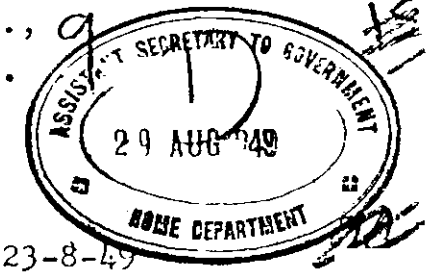
2 The date of judgment — 6.4.1949 & on page 4 of (W)
3 months time expires on — 5.7.1949
6 months time will expire on 5.10.1949

13/8/49 13.8.49 13/8/49

Issued as G.O. Ms No. 3305, Home, dt 13.8.49

From

Syed Md. Nakhuda Sahib Bahadur, M.A., B.L.,
District Magistrate, Bellary.



To

The Secretary to Government,
Home Department, Madras.

D.Dis.1867/49 Magl. Dated 23-8-49

Sir,

Sub;- Criminal justice- appeal against acquittal- Bellary S.C.5/48-

Ref;- G.O. Ms. No.3305 Home dated 13-8-49

*****

The District Superintendent of Police Bellary submitted his proposals only on 29-5-49. The relevant records of the lower court were called for and sent to the Public Prosecutor, Bellary. for obtaining his opinion which was received on 4-7-49. Therefore I submitted my report on 10-7-49. The delay is regretted.

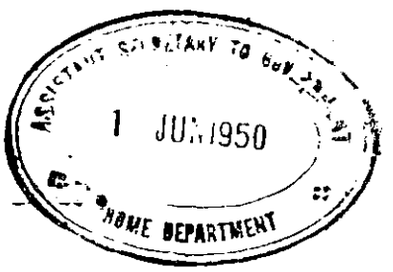
Home dept.

For District Magistrate,

K.R.

With reference to para 2 of GO Ms No 3305, Home, of 13-8-49 at p199 (M), please see the report above. No further action seems necessary. ~~The papers~~ May be ~~filed~~ lodged and filed with (M).

day, the twenty-fourth day of April
one thousand nine hundred and fifty.



The Honble Mr. Justice ... Das,
and
The Honble Mr. Justice Bose.

Criminal Appeal No. 273 of 1949.

The Public Prosecutor ... Appellant
versus
Bhola Nath Mehta. ... Respondent (Accused).

75375
1-6

Appeal under section 417 of the Code of Criminal Procedure, 1898, against the acquittal of the aforesaid Respondent (Accused) by the Assistant Sessions Judge of Allahabad/Criminal Division C.S.No. 6 of 1949 on his file.

This appeal coming on for hearing upon perusing the petition of appeal and the record of the evidence and proceedings before the Sessions Judge, Allahabad, and upon hearing the Government Prosecutor for the Appellant and Mr. ... Sahai and Mr. S. C. Talukdar, Advocate for the Respondent (Accused), the Court delivered the following Judgment:—

(Judgment of the Court was delivered by Bose,J.)

This appeal has been preferred by the Crown under section 417 against the order of acquittal of the respondent, Bhola Nath Mehta, of a charge of murder. Three persons claim to have seen the murder, viz., ... and Ali. Mr. ...'s evidence could support that he temporarily absented himself while the fatal blow was given. Except that he saw the accused on the deceased together near the accused's house, and that a shout went to the deceased's house, and that they ... returned to find that the deceased was dead. In cross-examination it was

readily admitted that the deceased was advancing the accused with a cudgel. P.W.10 and 11 in their cross-examination supported the story that was adopted by the prosecution at an early stage, i.e., that the deceased was attacked by five men, including the accused. When the Magistrate was recording an inquiry against all the five persons, these two witnesses however gave a story inconsistent with that which they gave in the Sessions Court. The learned Judge came to the conclusion that their evidence was not only unreliable but false. P.W.10 is a boy of 14 years of age and is a friend of the deceased. P.W.11 is an even younger boy, a cousin of P.W.10. The learned Sessions Judge thought that as these boys were present to speak truths at the inquiry of P.W., a friend of the deceased. The learned Sessions Judge has the advantage of seeing P.W.10 and 11 in the box; and we find no reason for disagreeing with his estimate of the value of their evidence.

A number of witnesses say that the accused was openly parading that he had killed the deceased and in his statement made in the Sessions Court to the charge he admitted that he stabbed the deceased; but pleaded that he did so, because he was in the first instance attacked by the deceased, which necessitated his attacking the deceased in order to save his own life. The evidence of P.W.1 supports the accused in that case.

There are two circumstances which could have been pressed against the accused. One is that he sustained no injury himself, while the deceased had no less than 20 serious injuries. The learned Acting Prosecutor argued that these may be seen truth in the earlier prosecution

story that five persons attacked the accused and that if so, all these injuries could not be attributed to the accused. The learned Sessions Judge however did not accept the evidence of P.W.s.10 and 11; and in the face of the evidence of P.W.2 it definitely seems to be false. One has however to bear in mind that the accused had suffered very severely at the hands of the deceased on an earlier occasion, having an arm and a leg broken. He had therefore every reason to apprehend that if the deceased succeeded in getting the better of him he would lose his life. In view of his past experiences, if what would otherwise seem to be undue aggressiveness may therefore have to be excused. In view of the uncertainty and unreliability of the prosecution evidence we cannot find sufficient justification for interfering with the learned Sessions Judge's order of acquittal.

The appeal is dismissed.

(Sd) V.T. Kandiah,
Ast Assistant Registrar,S.C.,
and Vacation Officer.

(true copy) [signature]
for Assistant Registrar,
appellate side.

30/4

To: 1. The Sessions Judge, Bellary (with records - in duplicate for communication to the accused).

2. The District Magistrate of Bellary.

3. The Inspector-General of Police, Madras.

4. The Public Prosecutor, Madras. (two copies).

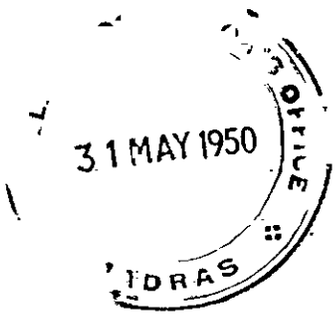
5. The District Superintendent of Police, Bellary.

C.A. 573-3-49.

Public Prosecutor's Office,
Madras dated, 31-5-1950

Forwarded to the Secretary to Government, Home Dept., Madras with ref. to G.O.MS.No.3305, Home, dated 13-8-49.

31-5-50
Public Prosecutor.



To

The Secretary to Governme
Home Department, Madras

Criminal M.P. 675 of 1949.

Home (Tri) Dept
Maybe lodged added to Go 3305 Home 13-8-49
Cse 1/6/50 Ex 7/6/50 / Hs 13/6/50

In Crl. M.P. filed praying that the order of committal be set aside and the accused be discharged.